

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 05-0543**

**Sales Tax**

**For Tax Years 2002-04**

**NOTICE:** Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

**I. Sales Tax—Retail Sales**

**Authority:** IC § 6-8.1-5-1; 45 IAC 2.2-4-21

Taxpayer protests imposition of sales tax on roofing jobs.

**STATEMENT OF FACTS**

Taxpayer is a roofing company. As the result of an audit, the Indiana Department of Revenue ("Department") determined that taxpayer had been acting as a retail merchant by selling roofing materials as part of its roofing business. The Department issued proposed assessments for sales tax based on this determination. Taxpayer protests the assessments. Further facts will be supplied as required.

**I. Sales Tax—Retail Sales**

**DISCUSSION**

Taxpayer protests the imposition of sales tax on amounts it charged its customers. Taxpayer states that it only provided roofing services and that the materials, except for roofing nails which taxpayer did purchase, were purchased by its customers. The Department based its determination on 45 IAC 2.2-4-21, which states:

(a) In general, all sales of tangible personal property are taxable, and all sales of real property are not taxable. The conversion of tangible personal property into realty does not relieve a liability for any owing and unpaid state gross retail tax or use tax with respect to such tangible personal property.

(b) All construction material purchased by a contractor is taxable either at the time of purchase, or if purchased exempt (or otherwise acquired exempt) upon

disposition unless the ultimate recipient could have purchased it exempt (see 6-2.5-5 [45 IAC 2.2-5])

The Department determined that taxpayer was liable for sales tax on the materials since the ultimate recipients could not have purchased the materials exempt.

As part of this protest, taxpayer provided adequate documentation to establish that it was only provided labor and roofing nails, rather than all of the roofing materials. Under IC § 6-8.1-5-1(b), the burden of proving an assessment wrong rests with the person against whom the assessment is made. In this case, taxpayer has met the burden placed on it by IC § 6-8.1-5-1(b). It was not subject to sales tax under 45 IAC 2.2-4-21 on any of the materials except the roofing nails which it did purchase.

### **FINDING**

Taxpayer's protest is sustained.

WL/BK/DK October 17, 2006